

DEPARTMENT OF STATE REVENUE

**LETTER OF FINDING NUMBER: 98-0014 ST
Sales & Use Tax
For Calendar Years 1994, 1995, & 1996**

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning specific issues.

ISSUE

I. Sales/Use Tax. - Manufacturing Exemption.

Authority: IC 6-2.5-5-5.1; 45 IAC 2.2-4-13

The taxpayer protests the partial denial of the sales tax exemption for utilities.

STATEMENT OF FACTS

The taxpayer is an interstate truck stop with five locations. Two of these locations have a 24-hour restaurant. This Letter of Finding deals with the utility exemption for these two locations with the 24-hour restaurant.

I. Sales/Use Tax – Manufacturing Exemption.

DISCUSSION

The taxpayer has been receiving utilities exempt of tax for several years. The taxpayer provided a utility study that supported predominate use (i.e. 100% exemption) for both locations. The auditor performed a review of the utility studies and calculated a partial exemption for both locations. The taxpayer protested the auditor's calculation with regard to refrigeration, gas pumps, and the water heater. The following details the analysis of each item:

Refrigeration. The taxpayer calculated a 31% demand factor for refrigeration. The auditor calculated a 50% demand factor. Utility engineers from Indianapolis Power and Light have testified that the demand factor for refrigeration can be anywhere from 40% to 60%. In light of the fact the restaurants are open 24 hours, the demand factor will tend to be closer to 60%. Past audits for restaurants have shown the demand factor to be about 50%.

The Department finds the auditor's computation to be correct. As such, the taxpayer's protest is denied with regard to refrigeration.

Gas Pumps. The taxpayer calculated a 20% demand factor. The auditor calculated a 50% and an 80% demand factor. It should be noted that the pumps only use the high KW usage when the pumps are actually pumping gas. Thus, the Department finds the taxpayer's demand factor to be reasonable. The taxpayer's protest is sustained with regard to gas pumps.

Water Heater. The taxpayer documented the rated KW for the water heater to be 5.4 KW. On the site tour, the auditor documented the rated KW to be 12.0. A reconfirmation by the taxpayer determined the KW to be 12.0. As such, the taxpayer's protest is denied with regard to the water heater.

The taxpayer's utility study calculated a 54% exemption for the first location, and a 55% exemption for the second location. Pursuant to this accounting, the taxpayer would be granted 100% exemption because the utility is being predominately (more than 50%) consumed for exempt purposes. The auditor calculated a 43% exemption for the first location and a 46% exemption for the second location. Upon review by the Department, the Department finds the refrigeration and water heater to be correct as computed by the auditor, but sustains the taxpayer with regard to the gas pumps.

FINDING

The protest is denied in part and sustained in part. The Department finds the auditor's adjustment with regard to refrigeration and the water heater to be correct, and therefore, denies the taxpayer with regard to these two items. The Department sustains the gas pump issue for the taxpayer. The resultant exemption percentage for the first location is 49.8%. The resultant exemption percentage for the second location is 52% which qualifies the taxpayer for predominate exemption with regard to the second location.